



27 July 2018

ASX Corporate Governance Council
c/o ASX Limited
PO Box H224
Australia Square NSW 1215

BY EMAIL: mavis.tan@asx.com.au

Dear Ms Tan,

The Financial Services Council welcomes the opportunity to make a submission in response to the Review of the ASX Corporate Governance Council's Principles and Recommendations.

The Financial Services Council (FSC) has over 100 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. The industry is responsible for investing more than \$2.7 trillion on behalf of 13 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world.

The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

We support the changes being proposed to the Principles to ensure they reflect current best practice in corporate governance.

As a member of the ASX Corporate Governance Council, the FSC recognises the importance of strong governance to maintain trust in individual businesses and the industry more broadly.

Please find our detailed submission attached.

Should you wish to discuss this submission further please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jane Macnamara', is written in a cursive style.

Jane Macnamara
Policy Manager

APPENDIX:

FSC COMMENTS ON ASX CORPORATE GOVERNANCE PRINCIPLES – 2018 CONSULTATION DRAFT

INTRODUCTION

The FSC welcomes the opportunity to comment on the draft 4th edition of the ASX Corporate Governance Principles and Recommendations.

We support the proposed updates to the Principles and Recommendations to ensure they continue to address emerging issues and ensure Australia maintains a high standard of corporate governance.

Our detailed comments on the consultation draft are below.

PRINCIPLE 1: LAY SOLID FOUNDATIONS FOR MANAGEMENT AND OVERSIGHT

Recommendation 1.3

Recommendation 1.3 suggests “the agreement should be with the director or senior executive personally rather than an entity supplying their services.” It is not clear whether this means there are some cases where this might not be appropriate. If so, it would be helpful to list some examples. If not, we suggest changing the wording from “should” to “must” in this sentence.

Recommendation 1.5

We are pleased to see an increased focus on board diversity in the consultation draft. Diversity of skills, background and experience is vital to ensure a range of viewpoints are represented and avoid “groupthink” on key issues.

However, this recommendation could be broadened to explicitly call out the gender pay gap. For example:

- Recommendation 1.5(b) should require the board to receive reporting on and monitor the gender pay gap within the organisation.
- Recommendation 1.5(c) should require disclosure of activities designed to reduce any gender pay gap.
- Lists of examples in the commentary on p14 and 15 should include the gender pay gap.

PRINCIPLE 2: STRUCTURE THE BOARD TO BE EFFECTIVE AND ADD VALUE

Recommendation 2.2

While this recommendation only requires the board skills matrix to be published at a group level, it is valuable to shareholders for individual directors’ contributions to the overall skillset of the board to be available. This helps shareholders make informed decisions when electing directors.

Recommendation 2.3

The FSC welcomes clarifications in Recommendation 2.3 to clarify circumstances which may compromise a director’s independence. In particular, we support the inclusion of commentary which creates a specific presumption that, where a director falls within a category which may raise concerns about their independence, the board should rule the director not to be independent unless the conflict can be shown to be immaterial.

PRINCIPLE 3: INSTIL THE DESIRED CULTURE

The FSC feels this section could be strengthened by:

- creating a positive obligation on directors to make enquiries, including seeking independent advice where appropriate, rather than solely relying on management reporting;
- including reference to the desirability of having a sustainability/corporate responsibility/OHS committee for overseeing and monitoring relevant issues;
- including reference to human rights in the supply chain – either within the existing reference to human rights on p25 or separately;
- including reference to specific environmental issues on p25, including climate change, pollution, water, supply chain impacts and environmental impact from the use phase of an entity's products or services.

There are some concerns that widening directors duties too broadly in relation to these issues will dilute the primacy of shareholders. Ideally, however, all these priorities should align.

Recommendation 3.1

The FSC supports this recommendation, however there should be an explicit recognition of the potential for interests to emerge that compete with the entity's core values, particularly through the use of incentives. Organisations need to actively manage these risks to ensure their core values prevail.

The commentary on p27 relating to disclosure of actions taken to enforce a code of conduct should encourage the use of aggregate statistics. It should also note that a lack of incidents recorded may indicate a deeper problem.

This section should also include a positive obligation for the board to ensure that reporting to relevant regulators/authorities is carried out where appropriate.

Box 3.2

To clarify the intent of the code of conduct we recommend a minor text change in the text of this section, to specify that the Code should require employees to "...act in accordance with the entity's stated values and in the best *long term* benefits of the entity..."

Recommendation 3.3 & 3.4

Both of these recommendations should place a positive obligation on the board to:

- ensure reporting of issues to relevant regulators and/or authorities is carried out; and
- make enquiries in relation to relevant matters, including seeking independent advice where appropriate, rather than solely relying on management reporting.

Recommendation 3.4 should also note that bribery and corruption issues could fall under continuous disclosure requirements.

PRINCIPLE 4: PRODUCE CORPORATE REPORTS OF HIGH QUALITY AND INTEGRITY

Recommendation 4.4

The wording on page 33 in relation to disclosure of information to investors should specify that reporting should include reference to material issues identified under Principle 7.4, along with other information of material importance to the entity's stakeholders or which may impact the entity's social licence to operate.

On the same page, reference to validation processes for reports not subject to assurance by external auditors should reference the use of recognised standards in order to provide appropriate information. Specific reference should be made to:

- accounting standards
- GRI
- SASB
- TCFD
- Integrated Reporting
- CDP
- Relevant industry standards

PRINCIPLE 5: MAKE TIMELY AND BALANCED DISCLOSURE

Recommendation 5.3

This recommendation should explicitly encourage businesses to go beyond traditional broker channels for engaging with investors. Companies should also report on the number and nature of private meetings with investors.

PRINCIPLE 6: RESPECT THE RIGHTS OF SECURITY HOLDERS

New wording of Principle 6

While the intent of the wording change is sound, the meaning should be clarified. The text which currently reads "...allow them to exercise their rights *as owners*..." is not technically accurate. It would be more correct to refer to "share ownership rights" or "shareholder rights" rather than ownership rights.

Recommendation 6.4

We welcome the new recommendation to ensure voting procedures are formalised.

PRINCIPLE 7: RECOGNISE AND MANAGE RISK

Commentary

The suggested change from "broader community" to "local community" on p41 narrows the application of this principle, which previously could have been interpreted to cover the entity's supply chain.

To maintain the reference to local communities without reducing the scope of risks to be managed, consider changing "in which the entity operates" to "in which the entity has positive and negative economic, social or environmental impacts."

Recommendation 7.1

This recommendation should consider not just the necessity of having a risk committee, but the importance of connections between the risk committee and other key committees – this includes OHS or sustainability committees where they exist.

Recommendation 7.4

This section should also include requirements for disclosures related to the materiality assessment and stakeholder engagement including the desirability of a materiality matrix (e.g. GRI, IR).

The definition of “material exposure” in this section should include not only impacts on the entity but also external impacts on people or the environment. It should also consider how value is created beyond security holders. This could read “...create or preserve value over the short, medium or longer term or that a reasonable person would judge to have significant impacts to people or the environment.”

Footnote 71 could also include an additional reference to TCFD and greenhouse gas protocol.

Climate change

It is positive that environmental and climate change factors are included in this section. We are aware that some organisations are voluntarily disclosing information about the impact of climate change scenarios on their business. This should not necessarily be mandated but could be encouraged.

Other considerations

In anticipation of incoming legislative requirements in the Modern Slavery Act, Principle 7 should reference modern slavery, human rights and/or labour rights.

Animal welfare considerations could also be included in this section.

PRINCIPLE 8: REMUNERATE FAIRLY AND RESPONSIBLY

New wording of Principle 8

The addition of reference to “short, medium and longer term” is useful. However, as these interests may not always be aligned, we feel that additional emphasis should be placed on long term value creation.

Commentary

Given US and UK law in this space, gender pay gap and average worker multiples should be included as considerations in the commentary on p45.

Recommendation 8.2

The guidelines on p48 in relation to disclosure of remuneration policies and processes should also include:

- Reference to gender pay gap and pay ratios as above;
- Consideration of perverse incentives, with examples such as:
 - EPS hurdles leading to acquisitions;
 - ROE hurdles leading to additional debt;
 - Encouraging share buy-backs;

- Discussion of complexity, and desirability of simpler and more transparent structures;
- Reference to the values and social licence of an entity, including using the use of discretion where objectives are achieved at a significant social or environmental cost or not in accordance with values.

GLOSSARY

Environmental risks and social risks

These new definitions should include discussion of opportunities as well as risk, for a more balanced definition.